

**STATE OF MISSOURI  
OFFICE OF STATE TREASURER SARAH STEELMAN  
AND  
MISSOURI HIGHER EDUCATION SAVINGS PROGRAM BOARD**

**REQUEST FOR PROPOSAL  
FOR A PROGRAM ADMINISTRATOR  
FOR THE MISSOURI HIGHER EDUCATION DEPOSIT PROGRAM**



**SUBMIT PROPOSALS TO:  
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## **I. INTRODUCTION**

### **A. PURPOSE OF RFP**

The Office of the State Treasurer of Missouri (the “STO”) and the Missouri Higher Education Savings Program Board (the “Board”) hereby seek proposals from qualified banking institutions, financial services institutions or other qualified firms (the “Bidder”) to provide administrative record-keeping services in connection with the State’s Higher Education Deposit Program (the “Deposit Program” or the “Program”; the successful Bidder referred to as the “Program Administrator”).

The Program is authorized pursuant to Sections 166.500 through 166.529 of the Missouri Revised Statutes as amended and attached as Exhibit A (the “Act”), and is intended to be maintained as a qualified tuition plan under Section 529 of the Internal Revenue Code of 1986, as amended (the “Code”). Under the Deposit Program, it is envisioned that any banking institution, as defined in Missouri Constitution Article 4, section 15, with a full-service banking facility within the State of Missouri, which meets certain qualifying criteria, will be eligible to issue 529-qualified Certificates of Deposit (“CDs”), as authorized and overseen by the State of Missouri pursuant to the Code and the Act. Each qualifying or participating banking institution will be responsible for the individual marketing of their 529-qualified CD’s as well as the setting of the yield and term for each CD issued to retail customers. The Program Administrator will therefore be responsible for the establishment and administration of the Program, including the following:

- Recommending eligibility criteria for qualifying banking institutions, which must be approved by the Board. Such criteria may include technological requirements, financial strength, operational requirements and other relevant criteria;
- Collecting deposit and withdrawal information from qualifying banking institutions on a daily basis, which would include customer information and the term, rate and structure of the CD’s issued, as well as keeping records of withdrawal, rollover and transfer requests;
- Accumulating such information and interfacing with the MOST Program Manager (defined herein) for the Missouri Saving for Tuition Program, the State’s existing 529 plan;
- Providing ongoing training and education to qualifying banking institutions;
- Developing and coordinating required disclosures and other information for customer materials; and
- Complying with the Program’s rules, which will be designed to satisfy the requirements of the Code and the Act.

The Deposit Program will be deemed to be a part of the Section 529 Trust created by the State and administered by the Board (the “Trust”), which currently includes the Missouri Saving for Tuition Program (“MOST”). As of the date of this RFP, MOST consists of a direct-sold plan and an advisor-sold plan, each of which is managed by TIAA-CREF

Tuition Financing Inc. (the “MO\$T Program Manager”). Upromise Investments, Inc., a subsidiary of Upromise, Inc., was recently selected by the State to be the new MO\$T Program Manager effective May 2006.

The Deposit Program is a nonexclusive alternative to the MO\$T Program – it will not be offered as part of the MO\$T Program. The Deposit Program was authorized to provide Missouri investors with a low-risk investment option and to make such products easily accessible to a broad, diverse range of families throughout the State. It will be the only Section 529 option available in Missouri that is at least partially insured by the Federal Deposit Insurance Corporation. The Deposit Program must at all times qualify for favorable federal and Missouri state tax treatment as provided under the Code and the Act. To do this the selected Program Administrator shall work with the MO\$T Program Manager responsible for aggregation of the State’s Section 529 Programs within the Trust (the “Missouri 529 Programs”).

Through this RFP process the Board will select the Bidder with the technological ability to interface daily with the participating banking institutions and the MO\$T Program Manager to perform daily management and administration of the Deposit Program. The Board and the STO will provide guidance and direction to the successful Bidder for certain matters relating to Program forms and disclosure statements. As Program Administrator, the selected Bidder will take actions to ensure that the Deposit Program complies with Section 529 (including the regulations promulgated thereunder) and the Act.

This RFP is being issued pursuant to and in accordance with the Act. No moneys have been or will be budgeted or appropriated for the Deposit Program by the State.

## **B. DEPOSIT PROGRAM INFORMATION**

In 2004, House Bill 959 authorized the Deposit Program as a Section 529 plan offering investment in CD’s. The Deposit Program is a nonexclusive alternative to MO\$T and is not a part of the current MO\$T Program (although it is part of the Trust). The Successful Bidder will have to work together with the MO\$T Program Manager who will be responsible for the aggregate record keeping for Missouri’s 529 Programs.

In 2005, the STO retained the services of a consultant to assist it in identifying necessary steps for the implementation of the Deposit Program, including the regulatory and legal issues presented thereby. Presently, the STO is pursuing a Deposit Program model that would allow multiple qualifying banking institutions within the State to issue Section 529 CDs. Please note that only financial institutions with a full-service branch in the State of Missouri would be eligible to participate in the Program. The Board envisions that so long as a banking institution meets the eligibility criteria recommended by the Program Administrator and adopted by the Board and agrees to the fee schedule and procedures adopted for the Program, then the banking institution may participate in the Program. Currently there are over 300 financial institutions that operate in the State.

It is anticipated that if such a model were implemented, management and record keeping for this Program would be conducted by a single Program Administrator and the associated costs would be borne by participating banking institutions and/or the account owners of the CDs. However, the CD Administrator would also need to work with the MO\$T Program Manager to ensure compliance with rules and regulations governing Section 529. The Treasurer and Board will consider other models for a Deposit Program in addition to the conceptual model described above to the extent consistent with the Act and the Code.

Although the Program Administrator for the Deposit Program will provide record-keeping services for CDs issued under the Deposit Program, the MO\$T Program Manager shall serve as the master record keeper for all Missouri 529 Programs within the Trust. Upromise Investments, Inc., a subsidiary of Upromise, Inc., was recently selected by the State to be the new MO\$T Program Manager effective May 2006.

Although every attempt has been made to provide accurate and up-to-date information, the State of Missouri does not warrant or represent that the background information provided herein reflects all relationships or existing conditions related to this Request for Proposal.

### **C. CONTRACT TERM AND PROVISIONS**

The term of the Contract for services pursuant to this RFP will be five (5) years from the launch date of the Deposit Program. The Contract will incorporate this RFP, including any amendments, written responses to questions, and the Bidder's proposal. In the event of an inconsistency between the Contract, this RFP or the Bidder's proposal, the order in which the provisions of these documents shall prevail will be the Mandatory requirements of the RFP (see Section III herein), the Contract, then the Bidder's Proposal and the remainder of this RFP (as amended and clarified by written questions).

### **D. PRE-PROPOSAL TELECONFERENCE**

The STO will hold a Pre-Proposal Teleconference on February 15, 2006. Although not mandatory, all potential Bidders are encouraged to participate in this Teleconference since information relating to this RFP will be discussed in detail. The RFP will be used as the agenda for the Teleconference and Bidders will be encouraged to ask questions regarding the RFP. Bidders specifically are encouraged to submit questions in writing in advance of the Teleconference. Such questions may be faxed to the State Treasurer's Office at (573) 751-7882 or emailed at [CDRFP@treasurer.mo.gov](mailto:CDRFP@treasurer.mo.gov). In addition, Bidders may submit follow-up written questions to the State Treasurer's Office no later than April 10, 2006.

Additional instructions for registration for this conference call will be provided via e-mail prior to the call. Reasonable accommodations can be provided for the hearing impaired. You must notify STO at [CDRFP@treasurer.mo.gov](mailto:CDRFP@treasurer.mo.gov) for such accommodations at least three business days prior to the scheduled Teleconference.

## **E. SUBMISSION INSTRUCTIONS**

Proposals must be completed (with all necessary attachments), signed and returned to the STO (Truman State Office Building, Suite 780, Jefferson City, Missouri) **by 1:00 PM Central on April 27, 2006**. The response must include five (5) copies in addition to the original document. *Responses must be in paper form and delivered directly to the STO by the deadline date.* Neither faxed copies nor electronic submissions will be accepted.

Each proposal must include the following:

- Transmittal letter
- Clear, unambiguous documented acceptance of the mandatory requirements or alternative solutions to provide the requirements
- Answers to the specific questions included in this RFP
- Signature of authorized representative

**The Program Administrator must uphold all service commitments for the duration of the Contract term.**

## **F. SCHEDULE, AWARD AND IMPLEMENTATION**

All Bidders are expected to understand the Board's anticipated schedule of events in connection with the Deposit Program:

<b>Week of / Date</b>	<b>Event</b>
<b>January 27, 2006</b>	STO issues Deposit Program RFP
<b>February 15, 2006</b>	Bidders' Teleconference
<b>April 27, 2006</b>	RFP due date
<b>May 2006</b>	Interviews, if any
<b>June 2006</b>	Notice of Intent to Award Contract
<b>June-July, 2006</b>	Contract Execution

Proposals must include an implementation schedule for the Program. The STO will work with the Program Administrator as necessary to complete implementation in a timely manner.

## **G. BID EVALUATION AND SELECTION CRITERIA**

The award of a Contract resulting from this RFP shall be based upon the evaluation criteria stated below:

Financial Evaluation	40%
Proposed Method of Performance	30%
Experience, Quality and Reliability	30%

## II. SCOPE OF SERVICES

The institution selected pursuant to this RFP will be responsible for all start-up activities of the Deposit Program including, but not limited to analysis of legal and regulatory requirements, development of appropriate forms for participating banking institutions, the development and implementation of a communication and recordkeeping system, and the performance of all the recordkeeping functions for the Program on behalf of the Board in compliance with the Act and Section 529. The Program Administrator shall perform all services under the direction of and to the sole satisfaction of the Board with the ultimate goal of facilitating a plan for families to save for higher education costs.

The Deposit Program will be marketed and sold directly to the public by the participating banking institution. The Program Administrator shall ensure compliance of the participating banking institutions with Section 529 and relevant Missouri statutes. The MOST Program Manager will be responsible for the aggregate record keeping and accounting. All forms, disclosure document and record keeping systems will be subject to prior approval by the Board.

Due to the fact that no moneys have been or will be budgeted or appropriated to implement the Deposit Program or to cover its ongoing costs, each Bidder shall propose an appropriate compensation method. One possibility is for the Program Administrator to charge a basis point fee against the yield of the CD (thereby reducing the yield to investors).

The Program Administrator's scope of duties will include, but not be limited to the following ("Program Administrative Services"):

**Product Development and Management** – The Program Administrator is responsible for all items related to Program start up, including but not limited to retaining counsel to determine the legal and regulatory requirements and obtaining approval from the necessary federal regulators, including a Treasury Department Private Letter Ruling and an SEC No Action Letter as necessary. The Program Administrator, subject to Board review and approval, will develop rules and procedures for participating banking institutions, providing all necessary forms for participation.

**Administration and Customer Service**– The Program Administrator must demonstrate the requisite knowledge of and experience with record keeping for tax-advantaged individual participant accounts. The Program Administrator will manage the Plan in compliance with the Code, applicable federal and State laws and regulations, including the Act and the Contract. Among other things, the Program Administrator will:

- Process all account activity on a timely basis, and provide quality service to both the participating banking institutions and the Board. The Program Administrator will maintain all customer and banking records for the Deposit Program in a central database and it must upload this data to the MOST Program Manager on a

daily basis. A copy of the MOST Program Manager's required file layout for interface with their accounting systems is included as Exhibit B. The Program Administrator will also provide accurate and complete reports to the Board and to the MOST Program Manager in a timely fashion consistent with Section 529 and the Contract.

- Work together with the Board to create a set of minimum qualification requirements for participating banking institutions to be able to offer the Deposit Program. At a minimum the participating banking institutions will be expected to:
  - Maintain an operating system capable of transferring information to the Program Administrator on a daily basis
  - Agree to keep all operating systems updated in accordance with changing rules and regulations (and have the financial capability to do so)
  - Comply with Program rules as established by the Program Administrator and the Board.
  - Set market rates that can be verified by an independent party.
  - Maintain an operating system that is capable of transferring information on a real time basis to the Program Administrator and an agreement to keep the information system updated (and therefore, the financial wherewithal to do so).
- Designate a liaison staff person to coordinate communication, deliverables, and progression between itself, the MOST Program Manager, and the participating banking institutions. The liaison shall be a key position that must have advanced communication (oral and written), organizational, and management skills. The liaison must attend all formal Board meetings unless otherwise notified by the Treasurer as well as respond to requests for telephone consultation within one business day. The STO reserves the right to approve or not approve any such person or to require the person's replacement, if such person is deemed unacceptable.
- Upon request, provide the STO access to all files, records, documents and data pertaining to the Deposit Program that are in its possession and control regardless of how that information is stored.
- Maintain and protect the confidentiality of participant personal information, including social security or taxpayer identification numbers and account numbers or codes in accordance with all applicable federal and State laws.
- Provide monthly and quarterly reports to the Treasurer that detail all activities of the Program for the reporting period. Such reports shall include all financial transactions including deposits and disbursements during the reporting period. The monthly reports shall detail the information "in total" and shall be submitted by no later than ten (10) business days after the end of the month. The quarterly

reports shall detail the information by individual account in addition to a report outlining participating banking institutions inquiries and results, the number and types of complaints and the manner in which they were resolved and shall be submitted by no later than fifteen (15) business days after the end of the quarter.

- Propose whether to offer customer support services directly to the individual participating banking institutions or directly to the depositors participating in the Deposit Program. The Program Administrator will propose the customer service option it believes will provide the most exemplary service possible to Deposit Program depositors. Whether the Program Administrator chooses to provide customer support through the individual participating banking institutions or directly to investors, customer service ultimately must be provided from [8:00am to 5:00pm] Central Time, Monday through Friday (except holidays), and depositors must have voice response unit (“VRU”) or Internet service access in all other hours (through which customers can obtain account information and make fulfillment requests).

**Marketing and Distribution** - The participating banking institutions will be responsible for marketing and distributing the CDs offered in the Deposit Program. The Program Administrator will:

- Provide all participating banking institutions with standard disclosure language regarding the Act, the Code, the Deposit Program, all other federal and state laws and regulations it deems appropriate (including the Disclosure Principles adopted by the College Savings Plan Network), and the risks of investing in the Program.
- Require each participating banking institution to agree that it will not create or use marketing or disclosure materials that have not been provided or approved by the Program Administrator. In this way, the Program Administrator will be responsible for Program compliance with applicable federal and State rules (if any) governing sales and distribution of the Program.

**Performance Reviews** – The Performance Reviews shall be performed by the Program Administrator in compliance with the Contract and the Program Administrator shall certify on an annual basis to the STO and the Board that the Program is in compliance with all applicable State and federal laws and regulations.

### **III. MANDATORY REQUIREMENTS**

**All of the following items must be initialed by an authorized representative of the Bidder indicating agreement to perform the mandatory requirements and the Bidder's understanding of the State's expectations. However, a Bidder may asterisk an item (\*) and document an alternative solution to the requirement.**

**Failure to comply in the above manner may be cause for rejection of the Bidder's proposal.**

#### **A. GENERAL REQUIREMENTS**

\_\_\_\_\_ a. The Program Administrator shall develop, implement, administer, and manage the Deposit Program in compliance with State and federal laws and in accordance with the provisions and requirements of the Contract.

\_\_\_\_\_ b. The Program Administrator shall perform all services under the direction of and to the sole satisfaction of the Board with an ultimate goal of facilitating a plan for families to save for qualified higher education expenses.

\_\_\_\_\_ c. The Program Administrator shall enter into a contract with the MOST Program Manager setting forth requirements and procedures for the interfacing of customer records between the two parties, as well as other relevant matters.

#### **B. PLANNING REQUIREMENTS**

\_\_\_\_\_ a. Within fourteen (14) calendar days after the notice to award the Contract, the Program Administrator shall meet with the Board or the STO staff to work out the finalization of the work plan for development and implementation of the Deposit Program and the record keeping system(s) to be used. The development and implementation schedules proposed by the Program Administrator will be incorporated in the Contract executed by the Board and the Program Administrator.

\_\_\_\_\_ b. The work plan shall, at a minimum, include the information contained in the Bidder's final offer submitted in response to this document and the following documentation:

- Rules, regulations, policies, procedures necessary for implementation and steps/actions and responsible party (ies) necessary to affect such rules, etc.
- Manpower effort required by the Program Administrator, Board personnel, and personnel from other entities or providers.

- Time periods that will be affected, including projected implementation date, federal time limitations, proposed data submission schedules, etc.
- All other information needed by the Board and the STO in order to determine planned actions and responsibilities.

\_\_\_\_\_ c. The Program Administrator shall agree and understand that the Board shall have the right to modify, require changes, and/or to require additional elaboration to the work plan as deemed necessary to insure a comprehensive understanding of the Deposit Program and planned activities for implementation of the Deposit Program.

\_\_\_\_\_ d. The Program Administrator shall not proceed with performance of any services until the work plan is approved by the Board. After approval of the work plan, the Program Administrator shall perform the services required in accordance with the approved work plan.

\_\_\_\_\_ e. The Program Administrator shall agree and understand that performance of services and implementation of the Deposit Program in accordance with the approved work plan is an essential function of the Board and is considered critical to the efficient operation of the Board. However, the amount of actual damages stemming from the Program Administrator's failure to comply with the work plan is difficult to establish until final approval of the work plan. Therefore, after final approval of the work plan, the Program Administrator and the Board shall mutually agree upon liquidated damages that shall apply for each requirement in the work plan.

\_\_\_\_\_ f. In the event that the Program Administrator is unable to or does not comply with a requirement in the work plan, it will be assessed the agreed upon amount of liquidated damages and shall agree that the amount of liquidated damages assessed shall be reasonable and fair under the circumstances.

\_\_\_\_\_ g. The Program Administrator shall further agree and understand that such liquidated damages shall be paid directly to the Board.

\_\_\_\_\_ h. During the term of the Contract, if the Program Administrator or the Board determines that any part of the work plan requires changes or modifications, the Program Administrator must submit written documentation regarding the necessary changes. Any such changes must be approved by the Board prior to performance by the Program Administrator.

### **C. PERFORMANCE REQUIREMENTS**

\_\_\_\_\_ a. Procedure Manual - The Program Administrator shall develop a procedure manual and obtain the approval of the Board throughout development of the procedure manual as specified in the approval requirements stated below. The procedure manual must contain all procedures and requirements for: (1) start-up of the Program, (2) qualification of participating banking institutions, (3) communication/interface plan from

the participating banking institutions and with the MOST Program Manager, (4) record-keeping systems for deposits, withdrawals and all related account activity, (5) processing withdrawal, rollover and transfer requests, and other account changes in accordance with the Code, and (6) compliance controls.

\_\_\_\_\_ b. The Program Administrator must prepare all printed forms and applications for participating banking institutions, which materials must be submitted to the Board for approval.

\_\_\_\_\_ c. By no later than the date approved by the Board in the work plan, the Program Administrator shall begin record keeping functions according to the work plan.

\_\_\_\_\_ d. The Program Administrator shall provide accurate individual record keeping for each account holder from the participating banking institutions to the MOST Program Manager on a daily basis. These records shall comply with the file layout requirements included in Exhibit B.

\_\_\_\_\_ e. The Program Administrator shall submit monthly and quarterly reports that detail all activities of the Program for the reporting period. Such reports shall include all financial transactions including deposits and disbursements during the reporting period. The monthly reports shall detail the information “in total” and shall be submitted by no later than ten (10) business days after the end of the month. The quarterly reports shall detail the information by individual account in addition to a report outlining participating banking institutions inquiries and results, the number and types of complaints and the manner in which they were resolved and shall be submitted by no later than fifteen (15) business days after the end of the quarter.

\_\_\_\_\_ f. In addition to the reports specifically required above, the Program Administrator must provide additional reports as deemed necessary by the Board.

\_\_\_\_\_ g. The Program Administrator shall maintain the procedure manual in an up-to-date and current status.

\_\_\_\_\_ h. The Program Administrator shall keep abreast of any changes to the federal and State laws or regulations, revised statutes, rules, etc., and shall update the Deposit Program and procedure manual accordingly.

\_\_\_\_\_ i. The Program Administrator must obtain the approval of the Board of any changes to the Deposit Program prior to implementation of such changes.

#### **D. OTHER REQUIREMENTS**

\_\_\_\_\_ a. The Program Administrator shall designate a liaison staff person to coordinate communication with the MOST Program Manager and with the participating banking institutions. The liaison shall be a key position that must have advanced communication (oral and written), organizational, and management skills. The Board reserves the right to

approve any such person or to require the person's replacement, if such person is deemed unacceptable.

\_\_\_\_\_ b. The Program Administrator must maintain financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified by the Board. These records must be made available at all reasonable times to the Board and/or its designees and the Missouri State Auditor during the contract period and for the length of time specified below for maintaining contract records after final expiration of the contract.

\_\_\_\_\_ c. The Program Administrator shall maintain books, records, documents, systems, and other evidence pertaining to the administrative costs and expenses of the contract to the extent and in such detail as shall properly reflect all revenues, all net costs, direct and apportioned, and other costs and expenses of the contract.

\_\_\_\_\_ d. The Program Administrator shall preserve and make records relating to the contract accessible to the Board upon request.

\_\_\_\_\_ e. The Program Administrator shall obtain a Private Letter Ruling from the Department of the Treasury and a No-Action Letter from the SEC prior to launching the Deposit Program.

## **E. FINANCIAL REQUIREMENTS**

\_\_\_\_\_ a. The Program Administrator shall agree and understand that none of the State, the Board or the STO shall be obligated for any payment or reimbursement whatsoever to the Program Administrator under the terms of the Contract.

\_\_\_\_\_ b. The Program Administrator shall agree and understand that compensation due the Program Administrator shall be as determined and agreed upon in the Contract.

\_\_\_\_\_ c. Other than compensation to the Program Administrator as stated herein, no other payments or reimbursements shall be made by the Board to the Program Administrator for any reason.

\_\_\_\_\_ d. The Program Administrator shall be responsible for all costs of development, set-up, and ongoing administration of the Deposit Program in accordance with applicable federal and State rules and regulations. The Program Administrator may recoup these costs anyway it sees fit, for example the Program Administrator could charge participating banking institutions a one-time or annual membership fee.

#### **IV. SPECIFIC QUESTIONS FOR BIDDERS**

**Bidders must provide clear and complete written responses to each of the following questions. Responses must be numbered in the same manner as the individual questions and will be used in evaluating each Bidder's proposed method of performance. Where applicable, answer "yes" or "no".**

**Failure to comply may result in rejection of the Bidder's proposal.**

##### **A. PROJECT APPROACH**

1. Provide an overview of the proposal for Program Administrative Services including a summary of the overall approach and scope of services proposed by the Bidder.
2. Describe how the Bidder would perform services in Missouri, by listing the task and the name and office location of the individual(s) who will be responsible for the proposed services, and the percentage of that individual's time dedicated to such responsibilities.
3. Describe the aspects or qualifications that distinguish the Bidder from competitors.
4. If Bidder is also a participating banking institution or an affiliate of a participating banking institution, please describe what mechanisms will be put into place to avoid any potential conflicts of interest that may arise as a result of being the Program Administrator as well as a participating banking institution or affiliate thereof.
5. Please describe the process you propose to obtain approvals from the necessary federal and State regulators (if any), including a Private Letter Ruling from the Department of Treasury and a No Action Letter from the SEC.
6. How will you market the Deposit Program to potential participating banking institutions?

##### **B. ORGANIZATION**

1. Discuss the history of the Bidder's organization, ownership and capital structure and lines of business. In a separate binder, please provide audited financial statements for the last three fiscal years as well as copies of any quarterly filings with federal regulators. The financial statements will be used during the review process only, and will be returned to the Bidder upon completion of the evaluation.
2. Please provide the most recent rating reports for the Bidder from the following rating agencies. Please explain any rating changes in the last three years. If the Bidder is not rated by the entities below, please provide rating information from any other

entity that rates the Bidder's credit quality or explain why the Bidder is not so rated. And, if the Bidder is not rated, please identify the party that will guarantee the Bidder's performance under an eventual Contract with the Board and provide rating information for that entity.

<b>Banking institution Rating</b>	<b>Fitch</b>	<b>Moody's</b>	<b>Standard &amp; Poor's</b>
<b>Senior Debt</b>			
<b>Commercial Paper</b>			
<b>Preferred Stock</b>			
<b>Issuer Rating</b>			
<b>Banking institution Deposits</b>			
<b>Counter Party</b>			

3. Describe procedures for compliance with applicable federal and State banking and securities regulations for the Program.
4. State whether there are any past or pending regulatory restrictions, consent orders, stipulations or litigation to which the Bidder (including affiliates, subcontractors or other partners in this RFP) or any of their principals, owners, directors or officers, has ever been a party that would affect its ability to provide the required services or which alleges or alleged any unfair, illegal or unethical business practice. If so, provide a detailed description of each.
5. State whether any officers, principals, owners, directors and all proposed contract employees that will provide records administration services have ever been convicted of a felony, had adjudication of guilt withheld as to any felony, or plead no contest to any felony. If so, a detailed description of each incident must be included.
6. State whether any penalties, fines or liquidated damages have ever been imposed against the Bidder (including affiliates, subcontractors or other partners in this RFP) within the past five (5) years. If so, provide a detailed description of each such incident, including the amount of the penalty, fine or liquidated damages imposed.
7. State whether the Bidder (including affiliates, subcontractors or other partners in this RFP) or any related entity has ever been involved in any threatened, pending, settled or adjudicated litigation with any qualified tuition program. If so, a detailed description of each action must be provided.
8. State whether the Bidder (including affiliates, subcontractors or other partners in this RFP) or any related entity has ever been or is currently aware of or has reason to believe it is or will be the subject of an audit or inquiry or enforcement action by the Office of the Comptroller of the Currency, the Missouri Division of Finance, the IRS, the Securities Exchange Commission (including the NASD and the MSRB), any other State or federal banking authorities, a Missouri regulatory or investigative agency or

by any other federal or state regulatory or investigative agency. If so, provide a detailed description of each.

9. In the last three years, what, if any, significant organizational changes (i.e., mergers, acquisitions, business concerns, etc.) have occurred? Is the Bidder currently involved in, or planning any major system changes, acquisitions, or conversions? Please explain your plans and include the potential impact to the STO and this Contract.
10. Provide an organization chart showing the operating interrelationships and authority within this service unit and the entire organization, highlighting staff members in key roles.
11. Please provide at least three references from existing 529 clients that can assess the Bidder's recordkeeping experience. If the Bidder does not have 529 clients, please explain why the references provided can assess how the Bidder would operate a 529 plan.

### **C. ADMINISTRATION AND RECORD KEEPING**

1. Describe the Bidder's experience in similar account administration and record keeping, including the number of years that service has been provided, and the frequency and volume of individual transactions that are processed on a daily or other periodic basis.
2. How will the Bidder interface with the MOST Program Manager, the individual participating banking institutions and the Board?
3. Please address each of the following questions related to the establishment and accounting of CD accounts:
  - a. How will accounts be opened at the participating banking institutions?
  - b. How will initial and on-going contributions be handled?
  - c. Will investors be able to contribute to the Deposit Program through payroll programs?
  - d. How will the participating banking institutions treat requests for withdrawals, changes of beneficiaries, transfers to other qualified tuition programs and other account-related activity?
  - e. How will the Program Administrator ensure each participating banking institution's on-going compliance with the Code?
4. Although the MOST Program Manager will be responsible for aggregation services for both the MOST and the Deposit Programs, the Bidder will be responsible for the accurate collection of account activity information and the transmission of this information to the MOST Program Manager. As such, the Bidder will be liable for any inaccuracies, omissions and other errors related to data collected and transmitted by the Bidder for the Deposit Program. Do you foresee any issues or problems, legal

or otherwise, in the sharing of information in this way with the MOST Program Manager?

5. Describe the Bidder's commitment to a state-of-art technical environment, including hardware, application and database software, communications equipment, and system security. What guarantees – financial and other - will the Bidder provide regarding its commitment to continually update its operating system?
6. Will the Bidder identify system programmers dedicated to the Deposit Program? If not, what is the average time for operating system enhancements to be implemented if required?
7. Describe the Bidder's disaster recovery plan, including backup procedures, alternate operating facilities, hardware and software replacement, and testing.
8. Describe the Bidder's procedures to ensure confidentiality of participant records and compliance with State and federal privacy laws.
9. Where will fulfillment requests be processed – by the Program Administrator or the participating banking institutions? Describe the systems, interfaces, and tracking mechanisms the Program Administrator intends to utilize for fulfillment requests.
10. How will the Bidder ensure that the Board and the STO have access to the files and data stored on its computers or other systems relating to the Deposit Program?
11. Describe any on-line information or reporting capabilities the Bidder will make available to the Board or STO including format, media, and frequency.
12. Describe the Bidder's ability to retain and retrieve participating banking institutions documents and correspondence, as well as history of contacts and other communications with the participants. What information does the Bidder propose to maintain and how?
13. Describe the problem management and escalation procedures the Bidder will follow. How and when will complaints be resolved and how will these be reported to the Board?
14. Describe how Bidder will carry out training and education to participating banking institutions as required by the Act.
15. Please describe how the Bidder will develop and provide Web access to clients of participating banking institution that enroll in the Deposit Program. Will the Web access be linked to the MOST Program Manager? If not, how will the Program Administrator ensure compliance with applicable privacy and security regulations? Will customer service representatives have access to the Web information?

#### **D. PLAN IMPLEMENTATION**

1. Describe the procedures and processes necessary to implement the Plan, noting particularly any legal or regulatory issues needing to be addressed, and whether the Bidder believes that any formal regulatory action is required. Include a project implementation plan as a separate attachment showing the specific steps, milestones and responsibilities from Contract award to launch of the Deposit Program and an estimated time each phase will take.
2. Explain how the Bidder will facilitate meetings with the STO to implement the Program and beyond.
3. Please identify the legal counsel(s) the Bidder will engage to assist with regulatory and legal analysis of Contract matters, plan implementation, and regulatory compliance.
4. Please identify the Missouri entity the Bidder intends to engage, if any, for assistance with Missouri legislative issues that arise during the course of the Contract.
5. Describe the STO's responsibilities and the resources required from it during this Contract period.
6. In implementing the Deposit Program throughout the State, do you believe there is an optimal number of participating banking institutions? Is this the same as the maximum number of participating banking institutions that the Bidder proposes to work with as Program Administrator?

#### **E. COST PROPOSAL**

1. In the table below, please specify the proposed fee structure for the Program Administrative Services assuming participation by all qualifying financial institutions. Please note that Bidders must disclose all fees and other compensation assessed to or collected from account owners, participating banking institutions or other entities.

<b>Fee Description</b>	<b>Proposed Fee/Frequency</b>
<b>Initial Set-up/Sign-up Fee Assessed to Participating Banking institutions</b>	
<b>On-going Fees – if any – Assessed to Participating Banking institutions</b>	
<b>Program Management Fee Deducted from Gross Yield on Banking institution 529 CDs</b>	

Fee Description	Proposed Fee/Frequency
Other – please specify	

2. If you indicated in IV.D.6, above, an optimal number of participating banking institutions, would this change your proposed fee structure above? If so, please provide those alternative fees.
3. Describe any fee sharing or other financial arrangements the Bidder currently has in place or intends to establish with banking institutions, investment managers, subcontractors or other service providers.

**\*\*\* No moneys have been or will be budgeted or appropriated for the Deposit Program by the State, the Board or the Treasurer. The Program Administrator shall agree and understand that none of the State, the Board or the Treasurer shall be obligated for any payment or reimbursement whatsoever to the Program Administrator under the terms of the Contract.**

## **V. GENERAL INFORMATION AND CONTRACT PROVISIONS**

### **A. CONTRACTUAL AGREEMENT AND AMENDMENT**

1. The Contract between the State and the successful Bidder shall consist of this RFP, including any amendments, written responses to questions, and the Bidder's proposal. These documents shall collectively be referred to as the "Contract." In the event of a conflict between the RFP and the Bidder's proposal, the provisions and requirements set forth and/or referenced in this RFP shall govern. However, the STO reserves the right to clarify any contractual relationship in writing with the concurrence of the Program Administrator, and such clarification shall govern in case of conflict with the applicable requirements stated in the RFP or successful Bidder's response. In all other matters not affected by the written clarification, if any, this RFP shall govern.

2. The STO reserves the right to negotiate with the Program Administrator for changes in services or additional service items, subject to mutual agreement. Any such amendments shall be agreed upon in writing as described in Section V. A. 3 immediately below.

3. Any change in the Contract must be accomplished by a formal written amendment signed and approved by and between the duly authorized representatives of the Program Administrator and the STO. Any amendment to the Contract shall (a) specify an effective date; (b) specify any increases or decreases in the amount of the Program Administrator's compensation, if applicable; (c) describe changes, if any, to the provisions of the Contract; (d) be entitled as an "Amendment"; and (e) be signed by the parties identified in the preceding sentence. The Program Administrator expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment to the Contract.

### **B. CONTRACT PERIOD, DEFAULT, CANCELLATION OR TERMINATION**

1. The STO anticipates entering into a Contract, which will run for five (5) years from the date of launch.

2. If, in the sole discretion of the STO, the STO concludes that the Program Administrator has substantially defaulted in any manner in performing any of the contractual terms and conditions, and notice of such default is given to the Program Administrator, and no reasonable action is taken to cure such default, the STO may immediately terminate the Contract.

3. The STO may cancel the contract, in whole or in part, at any time for a breach of any contractual obligation if such breach is not cured within a reasonable time. A reasonable time shall be defined as the commercially acceptable time allowed under like circumstances. Should the STO exercise its right to cancel the contract for such a reason,

the cancellation shall become effective on the date specified in a written notice of cancellation sent to the Program Administrator.

4. Upon expiration, termination, or cancellation of the Contract, the Program Administrator shall assist the Board to ensure an orderly transfer of duties and responsibilities and the continuity of those services required under the terms of the Contract to an organization designated by the Board. This includes providing all records and other Program information in a commercially usable form.

5. No provision in the Contract or in the Program Administrator's proposal shall be construed, expressly or impliedly, as a waiver by the STO of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract.

6. Any written notice to the Program Administrator shall be deemed sufficient when presented to an authorized employee at its address as listed on the signature page of the Contract, or deposited in the United States mail, postage prepaid, and addressed to the Program Administrator at its address as listed on the signature page of the contract, or at such address as the Program Administrator may have requested in writing.

#### **C. ASSUMPTION OF LIABILITY, INSURANCE AND INDEMNIFICATION**

1. The Program Administrator shall be liable to the STO and indemnify the STO for any loss of funds as a result of the Program Administrator's failure to properly execute a Contract obligation when such error is within its control. This includes system and/or processing downtime that is not restored in a timely manner.

2. The Program Administrator shall hold the STO harmless from any third party claims for damage resulting from any willful or negligent act or omission on the Program Administrator's part.

3. The Program Administrator shall be responsible for any and all injury or damage as a result of any negligent service rendered under the terms and conditions of the Contract. In addition to the liability imposed upon the Program Administrator for personal injury, bodily injury (including death) or property damage suffered as a result of their performance under the Contract, the Program Administrator assumes the obligation to save the State of Missouri, including the STO and the Board, its agencies, employees, and assigns, from every expense, liability or payment arising out of such negligent act.

4. The Program Administrator shall maintain adequate liability insurance to protect the State of Missouri, its agencies, its employees, its assigns, its clients, and the general public against any loss, damage, and/or expense related to its performance under the Contract. The insurance coverage shall include, but shall not necessarily be limited to, general liability, errors and omissions, professional liability, etc. Written evidence of the insurance coverage shall be provided to the STO. The evidence of insurance shall include, but shall not necessarily be limited to: effective dates of coverage; limits of liability; insurers' names; policy numbers; endorsement by representatives of the

insurance company; etc. Evidence of self-insurance coverage or of another alternate risk financing mechanism may be utilized, provided that such coverage is verifiable and irrevocably reliable. The evidence of insurance coverage must be submitted before or upon award of the Contract. In the event the insurance coverage is in any way changed, the STO shall be notified immediately.

#### **D. RECORDS, ACCESS AND CONFIDENTIALITY**

1. The Program Administrator shall maintain financial and accounting records and supporting evidence pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified by the STO.
2. All such forms, reports, records, tapes, files or other materials developed or acquired by the Program Administrator as a specified requirement of the Contract shall become property of the STO.
3. The Program Administrator shall permit reasonable access by the STO during the Contract Term and any extension periods, and for an eighteen (18) month period beyond the end of the Contract, for purposes of performing audit procedures relating to any aspect of the services provided by the Program Administrator to the STO in connection with the Contract.
4. Any and all information supporting the Contract and any and all tapes, files and data files maintained by the Program Administrator pursuant to Contract shall be provided to the STO, or a designated STO representative, at no cost to the STO or designated representative, upon request by the STO, at the end of the Contract.
6. The STO reserves the right to reject or request changes in all forms, reports, systems, and all other procedures.
7. If the STO requests a service be performed on a specific day, and that day is not a banking day, the Program Administrator must provide the service on the next banking day, unless otherwise indicated by the STO or by mutual agreement between the Program Administrator and the STO.
8. The Program Administrator shall maintain complete confidentiality of all records relating to services performed under the Contract in accordance with State and federal laws, rules and regulations. No list, report or other materials generated from data covered under the Contract may be disclosed or transferred by Administrator to any other person or entity.

#### **E. COMPLIANCE WITH APPLICABLE LAWS**

1. The Contract shall be construed according to the laws of the State of Missouri.
2. The Program Administrator shall comply with all local, State and federal laws and regulations related to the performance of the Contract, to the extent that the same may be

applicable, and must be registered with and maintain good standing with the Missouri Secretary of State and Department of Economic Development, Division of Finance, and/or any other Missouri State office or agency, as may be required by law or regulation.

3. The Program Administrator shall not represent itself or its employees to be an employee of the State of Missouri. The Program Administrator shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, its officers, agents, and employees harmless from and against, any and all loss, cost (including attorney fees), and damage of any kind related to such matters.

4. In connection with the furnishing of supplies or performance of work under the Contract, the Program Administrator agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Employment Opportunity Act, the Americans With Disabilities Act (ADA), and all other applicable federal and State laws, regulations, and executive orders to the extent that the same may be applicable and further agrees to insert the foregoing provision in all subcontracts awarded hereunder.

5. Contractors with the State of Missouri must comply with Article XIII of Executive Order #87-6 pertaining to discrimination and affirmative action. (The executive order may be viewed at [http://www.sos.mo.gov/library/reference/orders/1987/eo1987\\_006.asp](http://www.sos.mo.gov/library/reference/orders/1987/eo1987_006.asp)). Failure to comply may result in appropriate action including cancellation of the contract resulting from this RFP.

#### **F. PROPOSAL ACCEPTANCE OR REJECTION**

The STO reserves the right, in its sole discretion, to accept or reject any proposals, in whole or part, received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct discussions with any or all qualified bidders in any manner necessary to serve the best interests of the State of Missouri. The STO also reserves the right, in its sole discretion, to award a contract based on the written proposals received without prior discussions or negotiations.

#### **G. PROPOSAL PREPARATION COSTS**

The STO will not reimburse any bidder responding to this RFP for costs incurred in preparing documentation, making presentations, or any other costs incurred as a result of this RFP.

#### **H. INSTALLATION AND CONVERSION COSTS**

Any equipment installation, software or data file conversions, or any other costs associated with start-up and implementation of the Deposit Program shall be the responsibility of the Program Administrator.

## **I. REPLACEMENT EQUIPMENT AND TRAINING**

1. If requested by the STO, the Program Administrator shall upgrade any software provided under the Contract if necessary due to legislative changes. In addition, the Program Administrator shall provide the training and user manuals necessary to effectuate the replacement or conversion of software as commercially reasonable under the circumstances.
2. In the event that the Program Administrator's systems or any of its components are rendered permanently inoperative, the Program Administrator must have the capability to reconstruct necessary data files and operate on replacement equipment within three (3) business days of any disaster.

## **J. ANNUAL PROGRAM REVIEW**

The STO will conduct annual service reviews with the Program Administrator. Such reviews will include a review of the quality of services and discussion of any specific concerns of the STO, the Program Administrator or the MOST Program Manager, and will be documented in a mutually agreed upon format. If determined that service is inadequate this will result in a breach of Contract, refer to Section V. B of this RFP.

## **K. ASSIGNMENT**

The Program Administrator shall not assign any interest in the contract nor transfer any interest, whatsoever, in the same (whether by assignment or notation) without prior written consent of the STO.

## **L. CONFLICT OF INTEREST**

1. The Program Administrator covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. The Program Administrator further covenants that no person having any such known interest shall be employed by the Program Administrator or conveyed an interest, directly or indirectly, in the Contract.
2. The Program Administrator covenants that it will set up and abide by measures to avoid any potential conflict of interest that may arise a result of acting as both the Program Administrator and a participating banking institution.

## **VI. COMPENSATION**

### **A. METHOD OF COMPENSATION**

1. The method of compensation will be as proposed by the Program Administrator and as mutually agreed upon between the Program Administrator and the STO.
2. The Program Administrator will not be compensated for the costs of preparation of its proposal or the costs of Deposit Program implementation.
3. No compensation will be paid to the Program Administrator by the State of Missouri.

## **VII. PROPOSAL CONTENTS AND SELECTION**

### **A. GENERAL CONSIDERATIONS**

1. Each of the mandatory requirements in Section III must be initialed by an authorized representative to indicate the Bidder's acceptance of the requirement as stated.
2. Bidders must prepare concise and complete written responses to each of the specific questions in Section IV. Responses should be numbered and in the same order as the questions. Responses will be used in evaluating each Bidder's proposed method of performance.
3. Bidders are free to recommend any changes to approach or systems they believe would be beneficial or cost-effective. The State shall be the final and sole arbiter of whether such alternative solution proposals meet the State's requirements and are cost effective. Such proposals must be clearly identified by the vendor as "Alternative Solution Proposals." In all cases to be considered for evaluation, alternative solution proposals must clearly meet the intent of the mandatory requirements of the RFP, be cost effective, as well as meeting the overall objectives of the procurement and the state's needs as stated in Section II, the Scope of Services. Alternative solution proposals must be prepared in accordance with Part B of this section.
4. The STO may require presentations by Bidders after an initial evaluation by an evaluation committee. Presentations shall encompass the Bidder's proposal and introduce the staff that will be involved in servicing the Contract, including the liaison staffer. The STO is in no way obligated to offer the opportunity for presentations, and it may select a Bidder without viewing a presentation from the Bidder. All costs involved with the presentations are the Bidder's sole responsibility.
5. Bidders should be aware that proposals become public record under State law after the Contract is awarded. As such, neither the Board nor the STO can agree to treat any portion of a proposal as confidential.

### **B. FORMAT AND SUBMISSION OF PROPOSAL**

1. Proposals should provide straightforward and concise descriptions of the Bidder's ability to satisfy the requirements of this RFP. The proposal must be complete and accurate. Omissions, inaccuracies or misstatements will be sufficient cause for rejection of a proposal.
2. In preparing proposals, Bidders must use standard 8 ½" x 11" white paper with a minimum type size of 10 points. Consecutively number all pages in the Applicant's response (including attachments and/or appendices).

**3. Each proposal must include the following:**

- a. A cover letter stating:
  - The name, address, email, phone and fax numbers of the principal contact responsible for the oversight of the Contract.
  - The name, address, email, phone and fax numbers of the professional liaison that will be available to the Treasurer on a day-to-day basis during the Contract Term. Signature of an individual authorized to contractually bind the Bidder.
  - The letter should indicate the Bidder's understanding of the work required, the ability to perform the work and a statement that the proposal is firm and irrevocable for a minimum of 180 days.
- b. Initialed copy of the mandatory requirements or an alternative solution
- c. Answers to the specific questions posed to the bidders by the STO (Section IV)

4. All proposals must be submitted under sealed cover and received by the STO (Truman State Office Building, Suite 780, Jefferson City, Missouri **65101**) **by 1:00 p.m. Central on April 27, 2006**, unless the Treasurer provides notice that the date has been changed. Proposals received after this date and time will be rejected.

5. One original and five copies of the proposal must be submitted.

6. The original proposal must be marked "ORIGINAL COPY". All documents contained in the original proposal package must have original signatures and must be signed by a person who is authorized to bind the proposing firm. All additional proposal sets may contain photocopies of the original package.

7. US Postal or hand deliveries (UPS, Express Mail, Federal Express) should be delivered to the following address:

**State of Missouri  
Office of the State Treasurer  
Truman Building, Suite 780  
301 West High Street  
Jefferson City, MO 65101  
(573) 751-2411**

8. The Bidder must respond to this RFP by submitting all data required. Failure to submit such data may be deemed sufficient cause for disqualification of a proposal from further consideration for award.

## C. CLARIFICATION OF REQUIREMENTS

1. Any and all questions regarding specifications, requirements, competitive procurement process, etc., must be directed in writing to the Office of the State Treasurer by e-mailing questions to [CDRFP@treasurer.mo.gov](mailto:CDRFP@treasurer.mo.gov). This is the only method of communication accepted.
2. **Bidders are cautioned not to contact employees of the STO, employees of other State agencies, members of the General Assembly, any members of the evaluation committee concerning this procurement or any independent consultants engaged by the STO or the Board during the competitive procurement and evaluation process. Such contact may cause the Bidder's proposal to be rejected.**
3. The Bidder is advised that the only official position of the STO is that position which is stated in writing and issued by the STO as a RFP and any amendments thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.

## D. EVALUATION PROCESS

1. After determining that a proposal satisfies the fundamental requirements of this RFP, the comparative assessment of the relative benefits and deficiencies of the proposal in relationship to the published evaluation criteria shall be made by using subjective judgment. The award of a Contract resulting from this RFP shall be based on the evaluation criteria stated below:

<b>Financial Evaluation</b>	<b>40%</b>
<b>Proposed Method of Performance</b>	<b>30%</b>
<b>Experience, Quality and Reliability</b>	<b>30%</b>

*Any cost-effective suggestions to improve current systems may be used to select one Bidder over another if scoring is tied.*

2. After an initial screening process, if deemed necessary, the STO and the evaluation committee may ask a Bidder to clarify or verify the Bidder's proposal to develop a more comprehensive assessment of the proposal. Such a request will be delivered via e-mail to the officer signing the proposal, and will generally require a **48-hour turnaround** of the Bidder's response. Also, after the initial screening process, the evaluation committee will invite up to five (5) firms for an interview.
3. Only Bidders selected as Finalists by the evaluation committee will be interviewed. The interview will be used to clarify the written proposal. Bidders may NOT introduce new material during the interview. All principal participants of the Bidder's team should attend the interview. The evaluation committee has the right not to conduct interviews.

4. The STO reserves the right to consider historic information and facts, whether gained from the Bidder's proposal, question and answer conferences, references, or any other source, in the evaluation process.
5. It is the Bidder's sole responsibility to submit information related to the evaluation categories and the STO is under no obligation to solicit such information if it is not included with the Bidder's proposal. Failure of the Bidder to submit such information may cause an adverse impact on the evaluation of the Bidder's proposal including rejection of the Bidders' proposal.
6. In the event that only one (1) proposal is received in response to this RFP, the STO reserves the right to cancel the solicitation process or to negotiate the terms and conditions, including the price, as proposed in the sole Bidder's proposal. In addition, as part of such negotiations, the STO reserves the right to require supporting cost, pricing and other data from the Bidder in order to determine the reasonableness and acceptability of the proposal.
7. Competitive Negotiation of Proposals – Bidders are advised that under the provisions of this Request for Proposal, the State reserves the right to conduct negotiations of the proposals received or to award a Contract without negotiations. If such negotiations are conducted, the following conditions shall apply:
  - Negotiations may be conducted in person, in writing, or by telephone.
  - Negotiations will only be conducted with potentially acceptable proposals. The State reserves the right to limit negotiations to the Bidder's whose proposals received the highest rankings during the initial evaluation phase. All Bidders involved in the negotiation process will be invited to submit a best and final offer.
  - Terms, conditions, prices, methodology, or other features of the Bidder's proposal may be subject to negotiation and subsequent revision. As part of the negotiations, the Bidder may be required to submit supporting financial, pricing and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the proposal.
  - The mandatory requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the Division of Purchasing and Materials Management determines that a change in such requirements is in the best interest of the State of Missouri.

**EXHIBIT A**

**Revised Missouri Statutes, Sections 166.500 through 166.455**

## EXHIBIT A

### Revised Missouri Statutes, Sections 166.500 through 166.455

#### 166.500. Short title

Sections 166.500 to [166.529](#) shall be known and may be cited as the "Missouri Higher Education Deposit Program".

#### ➡166.501. Program established as alternative to Missouri higher education savings program

Notwithstanding the provisions of [sections 166.400](#) to [166.456](#) to the contrary, the higher education deposit program is established as a nonexclusive alternative to the Missouri higher education savings program, and any participant may elect to participate in both programs subject to aggregate Missouri program limitations.

#### ➡166.502. Definitions

As used in [sections 166.500](#) to [166.529](#), except where the context clearly requires another interpretation, the following terms mean:

- (1) **"Beneficiary"**, any individual designated by a participation agreement to benefit from payments for qualified higher education expenses at an eligible educational institution;
- (2) **"Benefits"**, the payment of qualified higher education expenses on behalf of a beneficiary from a deposit account during the beneficiary's attendance at an eligible educational institution;
- (3) **"Board"**, the Missouri higher education savings program board established in [section 166.415](#);
- (4) **"Eligible educational institution"**, an institution of postsecondary education as defined in [Section 529\(e\)\(5\) of the Internal Revenue Code](#);
- (5) **"Financial institution"**, a depository institution and any intermediary that brokers certificates of deposits;
- (6) **"Internal Revenue Code"**, the Internal Revenue Code of 1986, as amended;

(7) **"Missouri higher education deposit program"** or **"deposit program"**, the program created pursuant to [sections 166.500](#) to [166.529](#);

(8) **"Participant"**, a person who has entered into a participation agreement pursuant to [sections 166.500](#) to [166.529](#) for the advance payment of qualified higher education expenses on behalf of a beneficiary;

(9) **"Participation agreement"**, an agreement between a participant and the board pursuant to and conforming with the requirements of [sections 166.500](#) to [166.529](#);

(10) **"Qualified higher education expenses"**, the qualified costs of tuition and fees and other expenses for attendance at an eligible educational institution, as defined in [Section 529\(e\)\(3\) of the Internal Revenue Code of 1986](#), as amended.

➡ **166.505. Program created, Missouri higher education savings program board to administer, powers and duties--investment of funds**

1. There is hereby created the "Missouri Higher Education Deposit Program". The program shall be administered by the Missouri higher education savings program board.

2. In order to establish and administer the deposit program, the board, in addition to its other powers and authority, shall have the power and authority to:

(1) Develop and implement the Missouri higher education deposit program and, notwithstanding any provision of [sections 166.500](#) to [166.529](#) to the contrary, the deposit programs and services consistent with the purposes and objectives of [sections 166.500](#) to [166.529](#);

(2) Promulgate reasonable rules and regulations and establish policies and procedures to implement [sections 166.500](#) to [166.529](#), to permit the deposit program to qualify as a qualified state tuition program pursuant to [Section 529 of the Internal Revenue Code](#) and to ensure the deposit program's compliance with all applicable laws;

(3) Develop and implement educational programs and related informational materials for participants, either directly or through a contractual arrangement with a financial institution or other entities for deposit educational services, and their families, including special programs and materials to inform families with children of various ages regarding methods for financing education and training beyond high school;

(4) Enter into an agreement with any financial institution, entity, or business

clearinghouse for the operation of the deposit program pursuant to [sections 166.500 to 166.556](#); providing however, that such institution, entity, or clearinghouse shall be a private for-profit or not-for-profit entity and not a government agency. No more than one board member may have a direct interest in such institution, entity, or clearinghouse. Such institution, entity, or clearinghouse shall implement the board's policies and administer the program for the board and with electing depository institutions and others;

(5) Enter into participation agreements with participants;

(6) Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the account of the deposit program;

(7) Invest the funds received from participants in appropriate investment instruments to be held by depository institutions or directly deposit such funds in depository institutions as provided by the board and elected by the participants;

(8) Make appropriate payments and distributions on behalf of beneficiaries pursuant to participation agreements;

(9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in [sections 166.500 to 166.529](#) and the rules adopted by the board;

(10) Make provision for the payment of costs of administration and operation of the deposit program;

(11) Effectuate and carry out all the powers granted by [sections 166.500 to 166.529](#), and have all other powers necessary to carry out and effectuate the purposes, objectives, and provisions of [sections 166.500 to 166.529](#) pertaining to the deposit program;

(12) Procure insurance, guarantees, or other protections against any loss in connection with the assets or activities of the deposit program, as the members in their best judgment deem necessary;

(13) To both adopt and implement various methods of transferring money by electronic means to efficiently transfer funds to depository institutions for deposit, and in addition or in the alternative, to allow funds to be transferred by agent agreements, assignment, or otherwise, provided such transfer occurs within two business days;

(14) To both adopt and implement methods and policies designed to obtain the

maximum insurance of such funds for each participant permitted and provided for by the Federal Deposit Insurance Corporation, or any other federal agency insuring deposits, and taking into consideration the law and regulation promulgated by such federal agencies for deposit insurance.

3. The funds shall be invested only in those investments which a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, as provided in [section 105.688, RSMo](#), as a means to hold funds until they are placed in a Missouri depository institution as a deposit. The board may delegate to duly appointed representatives of financial institutions authority to act in place of the board in the investment and reinvestment of all or part of the moneys and may also delegate to such representatives the authority to act in place of the board in the holding, purchasing, selling, assigning, transferring, or disposing of any or all of the investments in which such moneys shall have been invested, as well as the proceeds of such investments and such moneys, however, such investments shall be limited to certificates of deposit and other deposits in federally insured depository institutions. Such representatives shall be registered as "qualified student deposit advisors on [section 529](#) plans" with the board and such board shall, by rule, develop and administer qualification tests from time to time to provide representatives the opportunity to qualify for this program. In exercising or delegating its investment powers and authority, members of the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. No member of the board shall be liable for any action taken or omitted with respect to the exercise of, or delegation of, these powers and authority if such member shall have discharged the duties of his or her position in good faith and with that degree of diligence, care, and skill which a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

4. No board member or employee of the deposit program shall personally receive any gain or profit from any funds or transaction of the deposit program as a result of his or her membership on the board. Any board member, employee, or agent of the deposit program accepting any gratuity or compensation for the purpose of influencing such board member's, employee's, or agent's action with respect to choice of intermediary, including any financial institution, entity, or clearinghouse, for the funds of the deposit program shall thereby forfeit the office and in addition thereto be subject to the penalties prescribed for bribery. However, a board member who is regularly employed directly or indirectly by a financial institution may state that institution's interest and absent himself or herself from voting.

5. Depository institutions originating the deposit program shall be the agent of the board and offer terms for certificates of deposit and other deposits in such program as permitted by the board, subject to a uniform interest rate disclosure as defined in federal regulations of the Board of Governors of the Federal Reserve System, specifically Federal Reserve Regulation DD, as amended from time to time. The board shall establish various deposit opportunities based on amounts deposited and length of time held that are uniformly available to all depository institutions that elect to participate in the program, and the various categories of fixed or variable rates shall be the only interest rates available under this program. A depository institution that originates the deposit as agent

for the board and participates in the program shall receive back and continue to hold the certificate of deposit or other deposit, provided such depository institution continues to comply with requirements and regulations prescribed by the board. Such deposit and certificate of deposit shall be titled in the name of the clearing entity for the benefit of the participant, and shall be insured as permitted by any agency of the federal government that insures deposits in depository institutions. Any depository institution or intermediary that fails to comply with these provisions shall forfeit its right to participate in this program; provided however, the board shall be the sole and exclusive judge of compliance except as otherwise provided by provisions in [Section 529 of the Internal Revenue Code](#) and the Internal Revenue Service enforcement of such section.

**➡166.508. Deposit program participation agreements, terms and conditions-- contribution limits--minimum holding time for contributions**

1. The board may enter into deposit program participation agreements with participants on behalf of beneficiaries pursuant to the provisions of [sections 166.500](#) to [166.529](#), including the following terms and conditions:

(1) A participation agreement shall stipulate the terms and conditions of the deposit program in which the participant makes contributions;

(2) A participation agreement shall specify the method for calculating the return on the contribution made by the participant as otherwise provided in [sections 166.500](#) to [166.529](#);

(3) The execution of a participation agreement by the board shall not guarantee that the beneficiary named in any participation agreement will be admitted to an eligible educational institution, be allowed to continue to attend an eligible educational institution after having been admitted or will graduate from an eligible educational institution;

(4) A participation agreement shall disclose to participants the risk associated with depositing moneys with the board, including information on federal insured deposit availability and coverage and penalties for withdrawal before the deposit has matured;

(5) Participation agreements shall be organized and presented in a way and with language that is easily understandable by the general public; and

(6) A participation agreement shall clearly and prominently disclose to participants the existence of any fee or similar charge assessed against the accounts of the participants for administration or services.

2. The board shall establish the maximum amount which may be contributed

annually by a participant with respect to a beneficiary.

3. The board shall establish a total contribution limit for deposit accounts established under the deposit program with respect to a beneficiary to permit the deposit program to qualify as a qualified state tuition program pursuant to [Section 529 of the Internal Revenue Code](#). No contribution may be made to a deposit account for a beneficiary if it would cause the balance of all deposit accounts of the beneficiary to exceed the total contribution limit established by the board. The board may establish other requirements that it deems appropriate to provide adequate safeguards to prevent contributions on behalf of a beneficiary from exceeding what is necessary to provide for the qualified higher education expenses of the beneficiary.

4. The board shall establish the minimum length of time that contributions and earnings must be held by the deposit program to qualify pursuant to [section 166.435](#). Any contributions or earnings that are withdrawn or distributed from a deposit account prior to the expiration of the minimum length of time, as established by the board, shall be subject to a penalty pursuant to [section 166.514](#).

**➡166.511. Prompt investment of moneys paid by participation agreements, use of moneys**

All money paid by a participant in connection with participation agreements shall be deposited as received and shall be promptly invested by the board or may be directly deposited by the board's agents. Contributions and earnings thereon accumulated on behalf of participants in the deposit program may be used, as provided in the participation agreement, for qualified higher education expenses.

**➡166.514. Cancellation of agreements, penalty**

Any participant may cancel a participation agreement at will. The board shall impose a penalty equal to or greater than ten percent of the earnings of an account for any distribution that is not:

- (1) Used exclusively for qualified higher education expenses of the designated beneficiary;
- (2) Made because of death or disability of the designated beneficiary;
- (3) Made because of the receipt of scholarship by the designated beneficiary;
- (4) A rollover distribution, as defined in [Section 529\(c\)\(3\)\(C\)\(i\) of the Internal Revenue Code](#); or

(5) Held in the fund for the minimum length of time established by the board.

➡**166.517. Assets used for program purposes only**

The assets of the deposit program shall at all times be preserved, invested, and expended only for the purposes set forth in this section and in accordance with the participation agreements, and no property rights therein shall exist in favor of the state.

➡**166.520. Rulemaking authority**

Any rule or portion of a rule, as that term is defined in [section 536.010, RSMo](#), that is promulgated pursuant to [sections 166.500](#) to [166.556](#) shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to August 28, 2004, is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 2004, if it fully complied with the provisions of chapter 536, RSMo. [Sections 166.500](#) to [166.556](#) and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

➡**166.523. Review of program by state auditor, when**

The Missouri state auditor shall, on a semiannual basis, review the financial status and investment policy of the program as well as the participation rate in the program. The auditor shall also review the continued viability of the program and the administration of the program by the board. The auditor shall report the findings annually to the board, which shall subsequently disclose such findings at a public meeting.

➡**166.526. Program moneys not part of state revenues**

Money accruing to and deposited in individual deposit accounts shall not be part of total state revenues as defined in [sections 17](#) and [18, article X, Constitution of Missouri](#), and the expenditure of such revenues shall not be an expense of state government under [section 20, article X, Constitution of Missouri](#).

➡**166.529. Confidentiality requirements**

All personally identifiable information concerning participants and beneficiaries of accounts established within the Missouri higher education deposit program pursuant to [sections 166.500](#) to [166.529](#) shall be confidential, and any disclosure of such information shall be restricted to purposes directly connected with the administration of the program.

#### ➡166.532. Sunset provision

Pursuant to [section 23.253, RSMo](#), of the Missouri Sunset Act:

- (1) The provisions of the new program authorized under [sections 166.500 to 166.557](#) shall automatically sunset six years after August 28, 2004, unless reauthorized by an act of the general assembly; and
- (2) If such program is reauthorized, the program authorized under [sections 166.500 to 166.532](#) shall automatically sunset twelve years after the effective date of the reauthorization of [sections 166.500 to 166.532](#); and
- (3) [Sections 166.500 to 166.532](#) shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under [sections 166.500 to 166.532](#) is sunset.

**EXHIBIT B**  
**Aggregation File Formats**

## EXHIBIT B

### Aggregation File Formats

#### Account Balances

The Account Balances file will be comprised of all accounts with a value greater than zero and/or accounts with distribution activity today. This will be sent on a nightly basis to the State's aggregator.

Header and trailer records are required (formats shown on page 2)

**Y** = Required from all recordkeepers

**Y\***= Either Net Contributions or Life To Date data must be provided

**O** = Optional items, may be used for reporting purposes

Filler is included at the end of each record for a total record length of 225 characters.

Information should be left justified within each field except for numbers, which should be right justified / zero filled with an implied decimal point (e.g., \$123.45 appears as 00012345)

#### Account Balance Detail Record

FIELD	DESCRIPTION/COMMENTS	Required	Length
<b>Record Type</b>	'D' for Detail	Y	1
<b>File Origin Identifier</b>	'C' for CD Program Recordkeeper	Y	1
<b>Program State Code</b>	'MO'	Y	2
<b>Market Value Date</b>	Date of account valuation MMDDYYYY	Y	8
<b>Account Number</b>	Recordkeeper's account number	Y	15
<b>Acct Owner SSN</b>	9 digits	Y	9
<b>Acct Owner Name</b>	First Name, Last Name– free form field	O	50
<b>Beneficiary SSN</b>	9 digits	Y	9
<b>Beneficiary Name</b>	First Name, Last Name – free form field	O	50
<b>Account Type</b>	S for Savings Program, P for Prepaid Program D for Deposit Program	O	1
<b>Market Value</b>	Account value based on Market Value Date (XXXXXX.XX decimal implied)	Y	8
<b>Net Contributions</b>	Preferred field, represents account Contribs – Withdrawals (XXXXXX.XX decimal implied)	Y*	8
<b>Life to Date Contributions</b>	Used if net contribution amount not available (XXXXXX.XX decimal implied)	Y*	8
<b>Life to Date Withdrawals</b>	Used if net contribution amount not available (XXXXXX.XX decimal implied)	Y*	8
<b>Rebalance Date</b>	Trade date of most recent account rebalance (investment election change) MMDDYYYY	Y	8
<b>Distribution Activity</b>	'Y' if Distribution taken today, else 'N'	Y	1
<b>Distribution Date</b>	The processing date of the distribution (not trade date) MMDDYYYY	O	8
<b>Filler</b>			30
	<b>Total file length</b>		225

### VIII. Header Record

FIELD	DESCRIPTION/COMMENTS	Required	Length
Record Type	'H' for Header	Y	1
Process date	MMDDYYYY	Y	8
File Origin Identifier	'C' = CD program	Y	1
Program State Code	'MO' = Missouri	Y	2
Description	MISSOURI AGGREGATION	Y	20
Filler		Y	193

### IX. Trailer Record

FIELD	DESCRIPTION/COMMENTS	Required	Length
Record Type	'T' for Trailer	Y	1
Process date	MMDDYYYY	Y	8
File Origin Identifier	'C' = CD program	Y	1
Program State Code	'MO' = Missouri	Y	2
# of Detail Records		Y	9
Filler		Y	204